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REMARKS

The present response is intended to be fully responsive to all points of objection and/or rejection raised by the Examiner and is believed to place the application in condition for allowance. Applicants assert that the present invention is new, non-obvious and useful. Prompt consideration and allowance of the claims is respectfully requested.

Status of Claims

Claims 1-21 are pending in this application and are rejected.

Claims 2 and 4-10 have been amended herein, and new claims 22 and 23 have been added herein. Applicants respectfully assert that the amendments to the claims and new claims add no new matter.

Claims 1, 3 and 11-15 have been canceled without prejudice or disclaimer. In making this cancellation without prejudice, Applicants reserve all rights in these claims to file divisional and/or continuation patent applications.

Claim Objections

In the Office Action, the Examiner objected to claims 3 and 4 because of alleged informalities. In response, claim 3 has been canceled, and claim 4 has been amended in order to cure this informality. Accordingly, Applicants request withdrawal of the objection.

CLAIM REJECTIONS

35 U.S.C. § 112 Rejections

In the Office Action, the Examiner rejected claims 7, 9, 11, 14 and 15 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner stated that claims 7 and 15 contain improper Markush groups. Applicant notes that claim 7 has been amended to correct the Markush group and that claim 15 has been canceled.

The Examiner stated that it is unclear in claim 9 how “a change of color” differs from “a change of hue” and how “a change of brightness” differs from “a change of intensity”.

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The Examiner stated that it is unclear how claim 11 further limits claim 6 and how claim 14 further limits claim 1. Applicant notes that claims 11 and 14 have been canceled.

Applicants respectfully assert that these amendments to claims 7 and 9 render those claims proper under 35 U.S.C. §112 and request that the rejections be withdrawn.

35 U.S.C. § 102 Rejection

In the Office Action, the Examiner rejected claims 1-5 and 7-10 under 35 U.S.C. § 102(e), as being anticipated by Cote et al (U.S. Patent No. 6,485,703). Applicant notes that independent claim 1 and dependent claim 3 have been canceled herein, and that dependent claims 2, 4-5 and 7-10 have been made dependent upon independent claim 16 or dependent claim 17. As such, this rejection is now moot.

35 U.S.C. § 103 Rejections

In the Office Action, the Examiner rejected claims 6, 11 and 12-15 under 35 U.S.C. § 103(a), as being unpatentable over Cote et al. as applied to claim 1 in view of Iddan et al. (U.S. Patent No. 6,428,469). Applicant notes that independent claim 1 and dependent claims 11 and 12-15 have been canceled herein, and that dependent claim 6 has been made dependent upon independent claim 16. As such, this rejection is now moot.

In the Office Action, the Examiner rejected claims 16 and 18-21 under 35 U.S.C. § 103(a), as being unpatentable over Iddan et al. in view of Cote et al.

The Examiner also rejected claims 16 and 18-21 under 35 U.S.C. § 103(a), as being unpatentable over Yokoi et al. (U.S. Patent No. 6,951,536) in view of Cote et al.

Applicant traverses these rejections for the reasons that follow.

Iddan et al. and Yokoi et al. teach autonomous, ingestible capsules including at least one imaging unit that captures images through an optical window. The Examiner admits that neither Iddan et al. nor Yokoi et al. disclose that the window has immobilized thereto agglutinative particles capable of interacting with at least one analyte so as to cause an optical change, but alleges that Cote teaches this feature and that it would have been obvious to modify the Iddan et al. or Yokoi et al. window with the analyte of Cote.

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Cote purports to teach optical approaches to glucose monitoring using chemically sensitive, stable, nontoxic and non-antigenic hydrogel particles that undergo a measurable change in at least one electrochemical or optical property as a function of interaction with one or more substances to be detected. Cote purports to describe methods of using these hydrogel particles to detect one or more selected analytes, namely glucose, and in certain aspects detect one or more analytes in vivo.

Cote describes a biosensor that uses a hydrogel coating on a surface that, upon contact with the analyte to be sensed, produces a detectable change in the optical properties of the surface. The hydrogel structure may undergo a measurable change in at least one electrochemical or optical property as a function of interaction with one or more substance(s) to be detected. See, Cote at column 8, lines 7-52.

Applicant first argues that it is improper to combine Iddan et al. or Yokoi et al. with Cote. Iddan et al. and Yokoi et al. teach imaging a body lumen from inside a capsule, whereas Cote does not disclose imaging from within the body, but rather describes imaging the binding of one analyte binding particle with another, from outside the body, i.e., through the skin. See, Cote at Figures 9A and 9B. In contrast to Iddan et al. and Yokoi et al., Cote does not describe in-vivo imaging from an in-vivo imaging device, as the imager of Cote is not inserted in-vivo. Thus, one who would be motivated to detect the presence of an analyte in a bodily fluid by in vivo imaging would not be motivated to look to Cote for a solution, as Cote does not speak to the use of an in vivo imager.

Applicant further notes that Cote does not disclose agglutinative particles that are capable of interacting with at least one analyte and further capable of gathering into agglutination groups so as to cause an optical change. As disclosed in the specification, Applicant refers to agglutination as clustering or precipitation of agglutinative particles and analytes such that the adhered agglutinative particles and analytes form discernable clusters, wherein those agglutinative particles are normally not discernable. See, e.g., at page 3, lines 6-15, and page 13, lines 1-21.

In contrast to Cote, Applicant does not just aim for binding between one analyte to another, but rather aims for imaging a gathering of particles. Since a group of particles is more noticeable than single bindings of particles, Applicants thus detect an optical

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change. In order to highlight the use of the agglutination particles in the claims, Applicant has amended independent claim 16 to recite that the optical window has immobilized thereto agglutinative particles that are capable of interacting with at least one analyte and are “capable of gathering into agglutination groups” so as to cause an optical change. Applicant has also amended independent claim 18 to recite that the step of combining in vivo the sample with agglutinative particles results in “the combined sample and agglutinative particles gather[ing] into agglutination groups” and that the step of detecting at least one optical change is “in the combined sample and agglutinative particles”.

Accordingly, independent claim 16 is not obvious over the combination of Iddan et al. or Yokoi et al. and Cote. Each of claims 2, 6, 7, 9 and 10, which are now dependent upon independent claim 16, depends directly or indirectly on independent claim 16 and includes the limitations of independent claim 16, and therefore are also not obvious over the combination of Iddan et al. or Yokoi et al. and Cote. Thus, Applicant respectfully requests that the Examiner withdraw this rejection of claim 16.

Similarly, independent claim 18 is not obvious over the combination of Iddan et al. or Yokoi et al. and Cote. Each of dependent claims 19-21 depends directly or indirectly on independent claim 18 and includes the limitations of independent claim 18, and therefore are also not obvious over the combination of Iddan et al. or Yokoi et al. and Cote. Thus, Applicant respectfully requests that the Examiner withdraw this rejection of claims 18-21.

In the Office Action, the Examiner also rejected claim 17 under 35 U.S.C. § 103(a), as being unpatentable over Iddan et al. in view of Cote et al., and further in view of Minshull et al. (U.S. Patent Application Publication No. 2002/0127623).

The Examiner further rejected claim 17 under 35 U.S.C. § 103(a), as being unpatentable over Yokoi et al. in view of Minshull et al.

Applicant traverses these rejections for the reasons that follow.

Dependent claim 17, as well as claims 4, 5 and 8, which are now dependent upon claim 17, depend directly or indirectly from amended independent claim 16. The patentability

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of amended independent claim 16 over the combination of Iddan et al. or Yokoi et al. and Cote was discussed above, and that discussion is applicable here.

In addition, Minshull et al. cannot cure the deficiencies of the combination of Iddan et al. or Yokoi et al. and Cote with respect to amended independent claims 16, as Minshull does not describe agglutination as described by Applicant, as quoted above. Therefore, because claim 16 is patentable over the combination of Iddan et al. and Cote, each of dependent claims 4, 5, 8 and 17 that includes all the features of claim 16 as well as additional distinguishing features is likewise patentable over the combination of Iddan et al. or Yokoi et al. and Cote.

Applicant has added new claims 22 and 23, dependent upon claim 18. Support for these claims is found throughout the specification, e.g., at page 19, line 24 - page 20, line 7. New claims 22-23 depend directly on independent claim 18 and includes the limitations thereof, and therefore are also not obvious over the combination of Iddan et al. or Yokoi et al. and Cote.

Conclusion

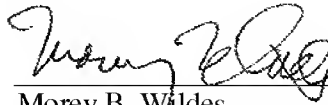
In view of the foregoing amendments and remarks, Applicants assert that the pending claims are allowable. Their favorable reconsideration and allowance is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

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Please charge any fees associated with this paper to deposit account No. 50-3355.

Respectfully submitted,



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